



# Sales Agreement

## ORDER FORM

National Superconducting Cyclotron  
 Laboratory  
 640 S. Shaw Lane  
 East Lansing, MI 48824-1321  
 Phone: 517- 908-7477  
 Email: meisel@nscl.msu.edu  
 Attn: Zach Meisel

Date: 04-11-2012  
 Expiration Date: 07-10-2012  
 Shipping: 60-90 Days after order acceptance  
 Quote no: RGS-20120412-BJR-1-0

Ref: MAX LG

Extrel CMS, LLC offers to provide to the Purchaser identified herein, the Equipment and/or Services comprising Purchaser's order as detailed in the attached Proposal to this Sales Agreement, subject to the terms and conditions set forth in this Sales Agreement. The documents comprising this Sales Agreement are:

1. Order Form;
2. Proposal; and
3. General Terms and Conditions of Sale.

### For Purchaser's Completion

	Billing Address	Shipping Address
Purchaser Name		
Address		
Phone		
Fax		
Contact		
Customer PO# Reference		

By signing below, Purchaser agrees to purchase the Equipment and/or Services comprising the order in accordance with the terms and conditions of this Sales Agreement. After signing, fax all pages of this Sales Agreement to **Extrel CMS, LLC at (412) 963-6578**, or email to [orders@extrel.com](mailto:orders@extrel.com), and then send the Sales Agreement containing Purchaser's original signature to **Extrel CMS, LLC at 575 Epsilon Drive, Pittsburgh, PA 15238, Attn: Contracts Department.**

### Agreed and Accepted by Purchaser:



\_\_\_\_\_

Authorized Purchaser Signature

Title

Date

### Agreed and Accepted by Extrel:

\_\_\_\_\_

Authorized Extrel CMS Signature

Title

Date

Extrel may revoke this offer at any time prior to execution of this Sales Agreement by Purchaser. This offer expires and is void if this Sales Agreement is not executed by Purchaser and returned to Extrel prior to the expiration date indicated above.

**Extrel CMS, LLC** 575 Epsilon Drive, Pittsburgh, PA 15238

Tele: 412-963-7530

Fax: 412-963-6578

[www.extrel.com](http://www.extrel.com)

**PROPOSAL**

**Quotation**

**MAX 300-LG**

<i>Item #</i>	<i>Part #</i>	<i>Quantity</i>	<i>Description</i>	<i>Price</i>	<i>Extended Price</i>
1	816625	1	MAX 300-LG Laboratory Gas Analyzer	\$52,500.00	\$52,500.00

This is the Standard Base System for Extrel's high performance benchtop mass spectrometer system.

- Mass range from 1-250 amu with the capability to monitor gases and vapors with fragment masses that fall within that range.
- Fast analysis with a typically analysis time of 12 seconds for 30 components or 1 ms per amu scanning mode.
- Dynamic range from 10 ppb (parts per billion) to 100% with the standard dual Faraday/Electron Multiplier detector.
- Dual filament ionizer. One filament is utilized for operation while the second filament acts as a spare. The system provides automatic filament switchover in case of burn-out.
- Automatic stream selection for Extrel's sample selection options. The system comes standard with a 4 port Cheminert valve.
- VacTRAC™ system allows the operator to perform routine maintenance quickly and easily without the frustration of reaching around, over and under the system.
- Uniquely designed inlet enables replacement in seconds without the need for tedious alignment procedures.
- High compression turbomolecular pump with molecular drag is standard. A "Fail safe" interlock protects the system against a power failure or sudden vacuum loss. The vacuum chamber is also equipped with a vacuum gauge and an auto vent assembly.

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<i>Item #</i>	<i>Part #</i>	<i>Quantity</i>	<i>Description</i>	<i>Price</i>	<i>Extended Price</i>
2	818563	1	Questor™ 5 Process Control Software	\$0.00	\$0.00

The Questor™ 5 Process Control Software is ideal for bench scale and pilot scale process research and development. The Questor™ 5 software is capable of monitoring an unlimited number of components, and can utilize multivariate analysis for enhanced performance in complex matrices. Single ion monitoring or full mass range scanning can be selected by the user. Component concentrations, intensities, and derived (calculated) values are displayed, stored, and outputted as defined by the user. Display options include graphical and tabular displays for both real time and archived data.

The system performs extensive diagnostics during SmartStart™ and continuously monitors diagnostics during operation to ensure data validity. The system status displays critical system parameters and the event logger flags any system issues.

Questor™ 5 software operates under the Microsoft Windows® based operating system and features a Web based user interface. The Questor™ 5 user interface provides easy and secure access to your system and data. The connection can be direct from a workstation or from a plant network via a standard Ethernet or equivalent link. User based password protection is implemented to provide data and operational security. Advanced event logging allows for data integrity and compliance with 21 CFR-11 regulations.

3	817698	1	Differentially Pumped, Stainless Steel Inlet A simple differentially pumped, stainless steel, inlet designed for low pressure and sub-ambient sample pressures. The pressure drop into the mass spectrometer is achieved in two stages. This inlet requires the low pressure Disposable Ionizer.	\$0.00	\$0.00
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## Sales Agreement

<i>Item #</i>	<i>Part #</i>	<i>Quantity</i>	<i>Description</i>	<i>Price</i>	<i>Extended Price</i>
4	817140	1	<p>Disposable Ionizer w/Yttria Coated Iridium Filaments - Low Pressure</p> <p>For use with Low Pressure Inlets. The latest in ion source technology, the disposable/recyclable ionizer is designed for quick and efficient replacement of the filaments and wetted parts of the ion source. This economical design assures the restoration of the ionizer to "as new" condition in one single step, with no elaborate assembly work. The ion source simply plugs into the base without requiring any tools. Filaments and lenses are pre-aligned. The system is returned to operational conditions in minutes instead of hours. This version is equipped with Yttria coated Iridium filaments for a long life and stable emissions.</p>	\$0.00	\$0.00
5	817132	1	<p>Standard Pump Package</p> <p>The standard pumping package consists of a turbomolecular pump with a molecular drag section and a standard roughing pump. Suitable for 220V/110V systems.</p>	\$0.00	\$0.00
6	817193	1	<p>4-Port Cheminert Valve</p> <p>4 position Cheminert low pressure stream selector valve. 1/16 inch Valco user connections, 0.75 mm ports (.030"), 75°C max, 100 psi gas/ 250 psi liquid, PPS stator Valcon E2 rotor.</p>	\$0.00	\$0.00
7	816561	1	<p>Standard Dual Detector, Faraday/Electron Multiplier</p> <p>The standard Dual Faraday and Electron Multiplier detector provides detection limits of 10 parts per billion (ppb) to 100%. This standard detector configuration is capable of automatic detector selection as defined by the user.</p>	\$0.00	\$0.00
8	816524	1	<p>Commissioning Spares (a \$5000 Value Included w/ System)</p> <p>The Commissioning Spares kit includes parts that you may need to insure a successful analyzer startup such as an extra Disposable Ionizer, gaskets, pump oil and wicks, and an extra Inlet. <b>This \$5000 value is included with your system purchase.</b></p>	\$0.00	\$0.00

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<i>Item #</i>	<i>Part #</i>	<i>Quantity</i>	<i>Description</i>	<i>Price</i>	<i>Extended Price</i>
9	819210	1	Shipping Crate, for use with MAX300-LG	\$0.00	\$0.00
10	798201	1	Applications Review (\$1,500 value) The applications review includes recommended analysis methods, recommended calibration methods and gases, and an estimation of analyzer performance. <b>The applications review is valued at \$1500. You receive this service for free with the purchase of your Extrel base system.</b>	\$0.00	\$0.00
11	819649	1	MAX300-LG Analyzer Controller and Data Acquisition Workstation The workstation is a desktop PC used to control the analyzer and acquire data. The Workstation includes: <ul style="list-style-type: none"> <li>• Intel ® Pentium 4® 2GHz or better processor</li> <li>• 40 Gigabyte or larger hard drive</li> <li>• 512 Mbytes or better RAM</li> </ul>	\$2,625.00	\$2,625.00
12	46	1	3 Day Start-up Service – Domestic Includes 24 hours on-site support for system start-up, methods configuration, calibration set-up, and applications support by an Extrel CMS Service Representative. Service personnel will be on-site during normal working hours not to exceed 8 hours per day. All travel and living expenses are included.	\$11,000.00	\$11,000.00
<b>Total</b>					<b>\$66,125.00</b>

### Options

<i>Item #</i>	<i>Part #</i>	<i>Quantity</i>	<i>Description</i>	<i>Price</i>	<i>Extended Price</i>
13	817261	1	16 Port Rotary Valve Stainless Steel 1/16" Ports 16 port rotary valve and actuator under data system control for fully automated stream selection. 0-175 degrees C, 1/16" Valco user connections. Front loading rotor, automatic alignment, and bi-directional operation.	\$8,400.00	\$8,400.00
14	35	1	Operator Training Course - 1 Week Operator Training Course at Extrel Facility for One Person One week basic operator training in Pittsburgh, PA. for one person. Includes classroom and laboratory sessions on theory, applications, maintenance and troubleshooting. Materials are included. The student is responsible for all travel, lodging and meal expenses.	\$2,950.00	\$2,950.00
15	817176	1	Aluminum Cart w/Wheels	\$2,625.00	\$2,625.00

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The Aluminum cart provides a structural support that raises the MAX300-LG analyzer to a height of approximately 20 inches above the floor. The cart includes locking casters (wheels) for ease of movement; allowing the instrument to be positioned for easy access during routine maintenance.

14	817400.a	1	<p>10 Channel Analog Output Expansion Option ( -10V to +10 V)</p> <p>This module provides 10 (10) 12-bit, -10V to + 10 V outputs. Any available data tag, including derived (calculated) values and the valve position can be mapped to an output and scaled in the software.</p>	\$5,250.00	\$5,250.00
15	29	1	<p>OPC Data Access Server</p> <p>The OPC data access server provides complete access to analyzer data over networks. Read/Write capability allows remote control of the analyzer via the OPC interface. An Ethernet connection is required between the server and client.</p>	\$2,625.00	\$2,625.00
16	39	1	<p>Modbus Slave Interface - RS-422, 4 wire</p> <p>The Modbus slave interface follows MODICON MODBUS protocol, RTU transmission mode. The system supports Coil Status, and Holding Registers and Bi-directional communications. RS-422 4-wire is multi-drop, half-duplex serial communication capable of operating at a distance of up to 4000 feet (~1,219 meters).</p>	\$5,250.00	\$5,250.00
17	38	1	<p>Modbus Slave Interface - RS-485, 4 wire</p> <p>The Modbus slave interface follows MODICON MODBUS protocol, RTU transmission mode. The system supports Coil Status, and Holding Registers and Bi-directional communications. RS-485 4-wire is a multi-drop, full-duplex serial communication protocol capable of operating at a distance of up to 4000 feet (~1,219 meters).</p>	\$5,250.00	\$5,250.00
18	31	1	<p>Modbus Slave Interface - RS-485, 2 wire</p> <p>The Modbus slave interface follows MODICON MODBUS protocol, RTU transmission mode. The system supports Coil Status, and Holding Registers and Bi-directional communications. RS-485 2-wire is, full-duplex serial communication capable of operating at a distance of up to 4000 feet (~1,219 meters).</p>	\$5,250.00	\$5,250.00
19	817288	1	<p>Modbus Slave Interface - TCP/IP</p>	\$5,250.00	\$5,250.00

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## Sales Agreement

The Modbus slave interface follows MODICON MODBUS protocol, TCP/IP transmission mode. The system supports Coil Status, and Holding Registers. Bi-directional communication is supported via TCP/IP and capable of operating at a distance of up to 300 feet (~100 meters).

20	817251	1	<p>20 Channel Analog Output Expansion Option ( 0V to +10 V)</p> <p>This module provides 20 (20) 12-bit, 0V to + 10 V outputs. Any available data tag, including derived (calculated) values and the valve position can be mapped to an output and scaled in the software.</p>	\$7,875.00	\$7,875.00
21	817400	1	<p>20 Channel Analog Output Expansion Option ( -10V to +10 V)</p> <p>This module provides 20 (20) 12-bit, -10V to + 10 V outputs. Any available data tag, including derived (calculated) values and the valve position can be mapped to an output and scaled in the software.</p>	\$7,875.00	\$7,875.00

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### All Prices in US Dollars

- Minimum order of \$300 USD.
- Unopened items (in original packaging) returned for credit are subject to a 10% restocking fee.
- Opened items returned for credit are subject to an evaluation / testing minimum fee equal to two (2) hours in-house labor, plus repair costs if required (per Extrel list), plus a 10% restocking fee.

The Equipment and/or Services described herein are offered for sale exclusively according to the Extrel CMS General Terms and Conditions attached. Acceptance of all orders will be made by Extrel in writing.

**Prepared By:** Brian Regel

**Contact Information:** brian.regel@extrel.com

**Sales Manager:** Rich Zahrobsky

**Sales Representative:** None

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Page 8 of 14

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## Sales Agreement

### EXTREL CMS GENERAL TERMS AND CONDITIONS OF SALE

1. General. The terms and conditions contained herein and the Order Form, together with any additional or different terms contained in Extrel's Proposal, if any, submitted to Purchaser (which Proposal shall control over any conflicting terms), constitute the entire agreement (the "Agreement") between the parties with respect to the order and supersede all prior or contemporaneous communications, agreements and understandings regarding the order. Terms and conditions contained in any purchase order or other ordering document submitted by Purchaser shall not be deemed to modify or supersede the terms and conditions of this Agreement. Unless the context otherwise requires, the term "Equipment" as used herein means all of the equipment, parts, accessories sold, and all software and software documentation, if any, licensed to Purchaser by Extrel ("Software") under the order. Unless the context otherwise requires, the term "Services" as used herein means all labor, supervisory, technical and engineering, installation, repair, consulting or other services provided by Extrel under the order.

#### 2. Prices.

(a) Unless otherwise specified in writing, all Proposals expire thirty (30) days from the date thereof.

(b) Unless otherwise stated herein, Services prices are based on Extrel normal business hours (8 a.m. to 5 p.m. Monday through Friday, excluding Extrel-recognized holidays). Overtime and Saturday hours will be billed at one and one-half (1 1/2) times the hourly rate; Sunday hours will be billed at two (2) times the hourly rate; and holiday hours will be billed at three (3) times the hourly rate. If a Services rate sheet is attached hereto, the applicable Services rates shall be those set forth in the rate sheet. Rates are subject to change without notice.

(c) The prices quoted in the Proposal do not include any charges for applicable taxes, governmental charges, duties or similar additions or deductions of any kind, and shall be paid by Purchaser to Extrel without deduction of any such taxes, duties, governmental charges or other deductions. There shall be added to the prices quoted any and all such taxes, governmental charges, duties, additions or deductions relating to the Equipment and Services purchased herein (other than United States Federal or state income taxes assessed on the income of Extrel or Extrel's state franchise taxes), which taxes, charges, duties and additions shall include, without limitation, all federal, state, local, governmental, republic or provincial sales (including harmonized sales), use, goods and services, excise and withholding taxes, unless Purchaser provides Extrel with a valid and applicable certificate of tax exemption with respect to such taxes within the time frame permitted under applicable law for Extrel to be able to rely on Purchaser's claimed exemption in good faith. In the event by operation of law or otherwise, such taxes, duties, governmental charges or other deductions are required to be deducted from any amounts paid by Purchaser to Extrel hereunder, the amounts due hereunder shall be increased to such amounts as may be necessary to yield Extrel the amount it would otherwise have received had such payments been made without any such taxes, duties, governmental charges or other deductions.

(d) Unless clearly indicated in the Proposal, the price does not include customs duties and other importation or exportation fees and associated costs, if any. Any such duties, fees and associated costs will be pre-paid and the Purchaser invoiced for the actual cost.

(e) In the event the Proposal does indicate that the price includes customs duties, other importation or exportation fees and/or associated costs, if any, they are at the rates in effect on the date of Extrel's Proposal. Any change after that date in such rates shall increase the price by Extrel's additional cost.

#### 3. Payment.

(a) Unless specified to the contrary in writing by Extrel, United States domestic payment terms are net cash, payable without offset, in United States Dollars, 30 days from date of invoice by wire transfer to the account designated by Extrel in the Proposal.

(b) Unless specified to the contrary in writing by Extrel, payment terms for orders outside the United States are by irrevocable letter of credit provided simultaneously upon the acceptance of the order, payable without offset in United States Dollars, at sight and issued by a United States bank or other financial institution in the form acceptable to Extrel.

(c) If in the judgment of Extrel the financial condition of Purchaser at any time prior to delivery does not justify the terms of payment specified, Extrel may require payment in advance, payment of security satisfactory to Extrel, or may terminate the order, whereupon Extrel shall be entitled to receive reasonable cancellation charges. If delivery is delayed by Purchaser, payment shall be due on the date Extrel is prepared to make delivery. Delays in delivery or nonconformities in any installments delivered shall not relieve Purchaser of its obligation to accept and pay for remaining installments.

(d) Purchaser shall pay, in addition to the overdue payment, a late charge equal to the lesser of 1 1/2% per month or any part thereof or the highest applicable rate allowed by law on all such overdue amounts.

(e) If Purchaser fails to pay any amount when due as required hereunder, or if there is the entry of decree or order for relief by a court having jurisdiction in respect of Purchaser in an involuntary case under Federal or state bankruptcy (or similar) laws, or if Extrel deems

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itself insecure, Extrel shall have the right to exercise any one or more of the following remedies: (i) to declare all amounts hereunder immediately due and payable together with all Extrel's charges, attorneys' fees and other costs without notice to Purchaser and to sue for and to recover that amount; or (ii) to take possession of any or all Equipment delivered hereunder without demand or notice wherever same may be located without any court order or process of law. Upon retaking possession of any or all such Equipment, Extrel at its option may (i) sell said Equipment or any part thereof to the highest bidder at public auction or private sale, and Purchaser agrees that ten (10) days notice to Purchaser of any public or private sale constitutes reasonable notice. Notice is deemed given on date of mailing. In the event Extrel sells such Equipment, then Extrel shall credit the value received from sale, less expenses incurred in connection with such disposition, to the unpaid balance of amounts due and to become due hereunder. Purchaser hereby waives any and all damages occasioned by such taking of possession. Any such taking of possession shall not relieve Purchaser of its obligations hereunder unless Extrel expressly so notifies Purchaser in writing. If any proceedings shall be instituted by Extrel to recover any monies due and/or for the possession of the Equipment, Purchaser shall pay Extrel's reasonable attorney fees, repossession expenses and other related expenses.

#### 4. Changes.

(a) Any changes requested by Purchaser affecting the ordered scope of work must be accepted by Extrel and resulting adjustments to affected provisions, including price, schedule, and guarantees mutually agreed in writing prior to implementation of the change.

(b) Extrel may, at its expense, make such changes in the Equipment or Services as it deems necessary, in its sole discretion, to conform the Equipment or Services to the applicable specifications. If Purchaser objects to any such changes, Extrel shall be relieved of its obligation to conform to the applicable specifications to the extent that conformance may be affected by such objection.

#### 5. Delivery.

(a) All Equipment manufactured, assembled or warehoused in the continental United States is delivered FCA point of shipment. Equipment shipped from outside the continental United States is delivered FCA United States port of entry. Purchaser shall be responsible for any and all demurrage or detention charges.

(b) If the scheduled delivery of Equipment is delayed by Purchaser or by Force Majeure, Extrel may move the Equipment to storage for the account of and at the risk of Purchaser whereupon it shall be deemed to be delivered.

(c) Shipping and delivery dates are contingent upon Purchaser's timely approvals and delivery by Purchaser of any documentation required for Extrel's performance hereunder.

(d) Claims for shortages or other errors in delivery must be made in writing to Extrel within ten days of delivery. Equipment may not be returned except with the prior written consent of and subject to terms specified by Extrel. Claims for damage during delivery shall be made directly by Purchaser with the common carrier.

6. Title & Risk of Loss. Except with respect to Software (for which title shall not pass, use being licensed) title to Equipment shall remain in Extrel until fully paid for. Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Purchaser upon delivery.

#### 7. Inspection, Testing and Acceptance.

(a) Any inspection by Purchaser of Equipment on Extrel's premises shall be scheduled in advance to be performed during normal working hours.

(b) If the order provides for factory acceptance testing, Extrel shall notify Purchaser when Extrel will conduct such testing prior to shipment. Unless Purchaser states specific objections in writing within ten (10) days after completion of factory acceptance testing, completion of the acceptance test constitutes Purchaser's factory acceptance of the Equipment and its authorization for shipment.

(c) If the order provides for site acceptance testing, testing will be performed by Extrel personnel to verify that the Equipment has arrived at site complete, without physical damage, and in good operating condition. Completion of site acceptance testing constitutes full and final acceptance of the Equipment. If, through no fault of Extrel, acceptance testing is not completed within thirty (30) days after arrival of the Equipment at the site, the site acceptance test shall be deemed completed and the Equipment shall be deemed accepted.

#### 8. Warranties and Remedies.

(a) Equipment and Services Warranty. Extrel warrants that Equipment (excluding Software, which is warranted as specified in paragraph (d) below) shall be delivered free of defects in material and workmanship and that Services shall be free of defects in workmanship. The Warranty Remedy Period for Equipment (excluding Software, spare parts and refurbished or repaired parts) shall end twelve (12) months after installation or eighteen (18) months after date of shipment, whichever first occurs. The Warranty Remedy Period for new spare parts or refurbished or repaired parts shall end ninety (90) days after date of shipment. The Warranty Remedy Period for Services shall end ninety (90) days after the date of completion of Services.

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(b) Equipment and Services Remedy. If a nonconformity to the foregoing warranty is discovered in the Equipment or Services during the applicable Warranty Remedy Period, as specified above, under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained, and written notice containing a description of the nonconformity is provided to Extrel promptly after such discovery and within the applicable Warranty Remedy Period, Extrel shall, at its option, either (i) repair or replace the nonconforming portion of the Equipment or re-perform the nonconforming Services or (ii) refund the portion of the price applicable to the nonconforming portion of Equipment or Services. If any portion of the Equipment or Services so repaired, replaced or re-performed fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to Extrel promptly after discovery and within the original Warranty Remedy Period applicable to such Equipment or Services or 30 days from completion of such repair, replacement or re-performance, whichever is later, Extrel will repair or replace such nonconforming Equipment or re-perform the nonconforming Services. The original Warranty Remedy Period shall not otherwise be extended.

(c) Exceptions. Extrel shall not be responsible for providing working access to the nonconforming Equipment, including disassembly and re-assembly of non-Extrel supplied equipment, or for providing transportation to or from any repair facility, all of which shall be at Purchaser's risk and expense. Extrel shall have no obligation hereunder with respect to any Equipment which (i) has been improperly repaired or altered; (ii) has been subjected to misuse, negligence or accident; (iii) has been used in a manner contrary to Extrel's instructions; (iv) is comprised of materials provided by or a design specified by Purchaser; or (v) has failed as a result of ordinary wear and tear. Equipment supplied by Extrel but manufactured by others is warranted only to the extent of the manufacturer's warranty, and the remedies, if any, provided by the manufacturer relating thereto are the Purchaser's sole and exclusive remedies for such Equipment.

(d) Software Warranty and Remedies. Extrel warrants that, except as specified below, the Software will, when properly installed and used, execute in accordance with Extrel's published specifications at normal workload volumes. If a nonconformity to the foregoing warranty is discovered during the period ending one (1) year after the date of shipment and written notice containing a description of the nonconformity is provided to Extrel promptly after such discovery and within that period, Extrel shall correct the nonconformity by, at its option, either (i) modifying or making available to the Purchaser instructions for modifying the Software; or (ii) making available at Extrel's facility necessary corrected or replacement Software. Extrel shall have no obligation with respect to any nonconformities resulting from (i) unauthorized modification of the Software or (ii) Purchaser-supplied software or interfacing. Extrel does not warrant that the functions contained in the software will operate in combinations which may be selected for use by the Purchaser, or that the Software products are free from errors.

(e) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE PURCHASER'S EXCLUSIVE REMEDIES AND EXTREL'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.

### 9. Intellectual Property Defense and Indemnity.

(a) Extrel shall defend at its own expense any claim against Purchaser alleging that the Equipment or the use of the Equipment to practice any process for which such Equipment is specified by Extrel (a "Process") directly infringes a trade secret, patent or copyright in the United States of America and to pay all damages and costs arising out of any such claim, provided that Purchaser has given Extrel prompt written notice of such claim, all necessary cooperation and assistance in the defense thereof and the right to control all aspects of the defense thereof including the right to settle or otherwise compromise the claim on behalf of Purchaser.

(b) Extrel shall have no obligation hereunder and this provision shall not apply to: (i) any other equipment or processes, including Equipment or Processes which have been modified or combined with other equipment or process not supplied by Extrel; (ii) any Equipment or Process supplied according to a design, other than an Extrel design, required by Purchaser; (iii) any products manufactured by the Equipment or Process; (iv) use of the Equipment in violation of the Agreement; or (v) any claim settled or otherwise compromised without the prior written consent of Extrel.

(c) If the Equipment or the practice of any process using the Equipment becomes, or in the opinion of Extrel is likely to become, the subject of a trade secret, patent or copyright infringement claim, Extrel may, at its option and its own expense, procure for Purchaser the right to continue using said Equipment or the practice of any Process; or modify or replace it with non-infringing equipment or, with Purchaser's assistance, modify the Process so that it becomes non-infringing; or remove it and refund the portion of the price allocable to the infringing Equipment.

(d) If Purchaser fails to permit Extrel to take any of the above-stated actions, Extrel's obligation(s) under this Article 9 shall immediately terminate and Purchaser shall have no recourse against Extrel for breach of any of the provisions contained in this Article. THE FOREGOING PARAGRAPHS STATE THE ENTIRE LIABILITY OF EXTREL FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT.

(e) To the extent that said Equipment or any part thereof is modified by Purchaser, or combined by Purchaser with equipment or processes not furnished hereunder (except to the extent that Extrel is a contributory infringer) or said Equipment or any part thereof is used by Purchaser to perform a process not furnished hereunder by Extrel or to produce an article, and by reason of said modification,

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## Sales Agreement

combination, performance or production, an action is brought against Extrel, Purchaser shall defend and indemnify Extrel in the same manner and to the same extent that Extrel would be obligated to indemnify Purchaser under this Article 9.

### 10. Limitation of Liability.

(a) NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, (I) IN NO EVENT SHALL EXTREL, ITS SUPPLIERS OR SUBCONTRACTORS BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, INCLUDING THE PERFORMANCE OR NON-PERFORMANCE OF THE EQUIPMENT OR SERVICES, WHETHER BASED IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS OR DELAYS, OR CLAIMS OF CUSTOMERS OF THE PURCHASER OR OTHER THIRD PARTIES FOR ANY DAMAGES, AND (II) EXTREL'S MAXIMUM LIABILITY FOR ANY REASON WHATSOEVER, WHETHER BASED IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, INCLUDING THE DESIGN, MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT, INSTALLATION, TECHNICAL DIRECTION OF INSTALLATION, INSPECTION, OPERATION OR USE OF ANY EQUIPMENT COVERED BY OR FURNISHED UNDER THIS AGREEMENT, OR FROM ANY SERVICES RENDERED IN CONNECTION THEREWITH, SHALL IN NO CASE EXCEED ONE-HALF (1/2) OF THE PURCHASE PRICE ALLOCABLE TO THE EQUIPMENT OR PART THEREOF OR SERVICES WHICH GIVES RISE TO THE RELATED CLAIM.

(b) All claims against Extrel arising out of or relating to this Agreement or the performance or breach thereof shall expire unless brought within one year of the time of accrual thereof.

(c) In no event, regardless of cause, shall Extrel be liable for penalties or penalty clauses of any description or for indemnification of Purchaser or others for costs, damages, or expenses arising out of or related to the Equipment and/or Services.

11. Laws and Regulations. Extrel does not assume any responsibility for compliance with the laws or regulations of any federal, state, local, republic, provincial or other governmental authority, except as expressly set forth herein, and compliance with any laws and regulations relating to the operation or use of the Equipment or Software is the sole responsibility of the Purchaser. All laws and regulations referenced herein shall be those in effect as of the Proposal date. In the event of any subsequent revisions or changes thereto, Extrel assumes no responsibility for compliance therewith. If Purchaser desires a modification as a result of any such change or revision, it shall be treated as a change per Article 4. Nothing contained herein shall be construed as imposing responsibility or liability upon Extrel for obtaining any permits, licenses or approvals from any governmental authority required in connection with the supply, erection or operation of the Equipment. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, but excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and excluding Pennsylvania law with respect to conflicts of law.

12. OSHA. Extrel warrants that the Equipment will comply with the relevant standards of the Occupational Safety and Health Act of 1970 ("OSHA") and the regulations promulgated thereunder as of the date of the Proposal. Upon prompt written notice from the Purchaser of a breach of this warranty, Extrel will replace the affected part or modify it so that it conforms to such standard or regulation. Extrel's obligation shall be limited to such replacement or modification. In no event shall Extrel be responsible for liability arising out of the violation of any OSHA standards relating to or caused by Purchaser's design, location, operation, or maintenance of the Equipment, its use in association with other equipment of Purchaser or in violation of this Agreement, or the alteration of the Equipment by any party other than Extrel.

### 13. Software License.

(a) Extrel owns all rights in or has the right to sublicense all of the Software, if any, to be delivered to Purchaser under this Agreement. As part of the sale made hereunder Purchaser hereby obtains a limited license to use the Software, subject to the following: (i) The Software may be used only in conjunction with equipment specified by Extrel; (ii) The Software shall be kept strictly confidential; (iii) The Software shall not be copied, reverse engineered, or modified; (iv) The Purchaser's right to use the Software shall terminate immediately when the specified equipment is no longer used by the Purchaser or when otherwise terminated, e.g. for breach, hereunder; and (v) the rights to use the Software are non-exclusive and non-transferable, except with Extrel's prior written consent.

(b) Nothing in this Agreement shall be deemed to convey to Purchaser any title to or ownership in the Software or the intellectual property contained therein in whole or in part, nor to designate the Software a "work made for hire" under the Copyright Act, nor to

**Extrel CMS, LLC 575 Epsilon Drive, Pittsburgh, PA 15238**



## Sales Agreement

confer upon any person who is not a named party to this Agreement any right or remedy under or by reason of this Agreement. In the event of termination of this License, Purchaser shall immediately cease using the Software and, without retaining any copies, notes or excerpts thereof, return to Extrel the Software and all copies thereof and shall remove all machine readable Software from all of Purchaser's storage media.

(c) Purchaser agrees that any enhancements, bug fixes, modifications, functional changes or upgrades hereinafter made to the Software or by Extrel and provided to Purchaser hereunder or otherwise shall be deemed to be part of the Software and use thereof by Purchaser shall be governed by this Agreement.

14. Inventions and Information. Unless otherwise agreed in writing by Extrel, all right, title and interest in any inventions, developments, improvements or modifications of or for Equipment and Services shall remain with Extrel. Any design, manufacturing drawings or other information provided to the Purchaser shall remain the exclusive property of Extrel. Purchaser shall not, without Extrel's prior written consent, copy or disclose such information, in whole or in part, to any third party. Such information shall be used solely for the operation or maintenance of the Equipment and not for any other purpose.

15. Force Majeure. Extrel shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), acts of God, fire, strike, labor difficulties, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production, and the price will be adjusted to compensate Extrel for such delay.

16. Cancellation. Any order may be cancelled by Purchaser only upon prior written notice and payment of Extrel's termination charges, including but not limited to, all costs identified to the order incurred prior to the effective date of notice of termination (including Extrel overhead allocations) and all expenses incurred by Extrel attributable to the termination, plus a fixed sum of ten (10) percent of the final total price to compensate for disruption in scheduling, planned production and other indirect costs.

17. Termination. No termination by Purchaser for default shall be effective unless, within fifteen (15) days after receipt by Extrel of Purchaser's written notice specifying such default, Extrel shall have failed to initiate and pursue with due diligence correction of such specified default.

18. Export Control.

(a) Purchaser represents and warrants that the Equipment and Services provided hereunder and the "direct product" thereof are intended for civil use only and will not be used, directly or indirectly, for (i) production of chemical or biological weapons or of precursor chemicals for such weapons, (ii) any direct or indirect nuclear end use, or (iii) any other use prohibited by law, including regulations of the United States Department of Commerce and other governmental authorities concerning the export or re-export of U.S. origin goods or services, and the products thereof. Purchaser agrees not to disclose, use, export or re-export, directly or indirectly, any goods or services, software, technical data or other information provided by Extrel, or the "direct product" thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with applicable laws, including the Export Control Regulations.

(b) Where applicable, Extrel shall file for a U.S. export license or other U.S. export-related authorization, but only after appropriate documentation for the license or other authorization has been provided by Purchaser. Purchaser shall furnish such documentation within a reasonable time after order acceptance. Any delay in obtaining such license or other authorization shall suspend performance of this Agreement by Extrel. If an export license or other authorization is not granted or, if once granted, is thereafter revoked or modified by the appropriate authorities, this Agreement may be canceled by Extrel without liability for damages of any kind resulting from such cancellation. At Extrel's request, Purchaser shall provide to Extrel a United States Department of Commerce Letter of Assurance, End-User Statement and/or all such other documents reasonably requested by Extrel in form(s) reasonably satisfactory to Extrel to comply with applicable laws.

19. Assignment. Any assignment of this Agreement or of any rights or obligations under the Agreement, in whole or in part, without prior written consent of Extrel shall be void.

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Page 13 of 14



## Sales Agreement

20. Nuclear Insurance – Indemnity. For applications in nuclear projects, the Purchaser and/or its end user customer shall have complete insurance protection against liability and property damage resulting from a nuclear incident to and shall indemnify Extrel, its subcontractors and suppliers against all claims resulting from a nuclear incident.

21. Arbitration. All disputes of every kind and nature arising out of or relating to this Agreement (including, without limitation, the negotiation, existence, construction, validity, interpretation, performance, breach or termination thereof) shall be submitted to binding arbitration pursuant to the then existing Commercial Arbitration Rules of the American Arbitration Association. The Purchaser may demand such arbitration within one (1) year after the expiration of the cure period set out in Section 10(b), but not thereafter. All demands for arbitration shall be in writing and shall include a statement of the matter in controversy. Arbitration hearings shall be conducted in Pittsburgh, Pennsylvania, and the award rendered by the arbitrator(s) shall be final and binding on all parties to the proceeding, and judgment on such award may be entered by any party in any court of competent jurisdiction. The Purchaser and Extrel agree that the provisions hereof shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or local court or before any administrative tribunal with respect to any controversy or dispute arising out of or relating to this Agreement and which is arbitrable as herein set forth. The arbitration provisions hereof shall, with respect to such controversy or dispute, survive the termination of this Agreement. Notwithstanding the foregoing, Extrel or Purchaser may seek injunctive relief in a court of law or equity to assert, protect or enforce its rights in: (i) any intellectual property, including, without limitation, any rights it has in patents, copyrights, trademarks or trade secrets; and/or (ii) confidential or proprietary information as described in this Agreement. Nothing herein contained shall be deemed to give the arbitrator(s) any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

22. Entire Agreement. This Agreement constitutes the entire agreement between Extrel and Purchaser concerning the subject matter hereof. There are no agreements, understandings, restrictions, warranties, or representations between Extrel and Purchaser other than those set forth herein or herein provided. If any provision hereof, partly or completely, shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision or portion hereof and these terms shall be construed as if such invalid or unenforceable provision or portion thereof had never existed.

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Page 14 of 14

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